



# MINUTES

## Motor Vehicle Dealers Study Committee

October 11, 2005

### MEMBERS PRESENT:

Senator Matt McCoy,  
Co-chairperson  
Senator John Putney,  
Co-chairperson  
Senator Thomas Rielly  
Senator Brad Zaun

Representative Scott Raecker,  
Co-chairperson  
Representative Jeff Kaufmann  
Representative Jim Lykam

## MEETING IN BRIEF

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Organizational staffing provided  
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- I. Procedural Business.
- II. Opening Statement.
- III. Mr. James West, Iowa Automobile Dealers Association.
- IV. Mr. Michael Treinen, Iowa Auto Dealers Association for Fair Competition.
- V. Mr. Ron Brown, Bob Brown Chevrolet.
- VI. Mr. Stew Hansen, Stew Hansen's Dodge City.
- VII. Mr. James Piazza, Jr., Iowa Auto Dealers for Equal Opportunity.
- VIII. Mr. Doug Livy, Iowa Independent Auto Dealers Association.
- IX. Ms. Judy Wilson, Iowa Independent Auto Dealers Association.
- X. Discussion.
- XI. Materials on File With the Legislative Services Agency.



## Motor Vehicle Dealers Study Committee

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### I. Procedural Business.

**Call to Order.** Co-chairperson Putney called the Motor Vehicle Dealers Study Committee to order at 9:07 a.m. on Tuesday, October 11, 2005, in Room 24 of the State Capitol, Des Moines, Iowa. Co-chairperson Putney noted that Senator Zaun would be arriving late.

**Approval of Rules.** Co-chairperson McCoy moved that the proposed rules be approved. The motion was seconded by Co-chairperson Raecker and the motion was adopted.

**Election of Co-chairpersons.** Senator Rielly moved that the temporary Co-chairpersons be elected permanent Co-chairpersons. The motion was seconded by Representative Kaufmann and was adopted.

**Adjournment.** The Committee recessed for lunch at 11:55 a.m. and reconvened at 1:06 p.m. Co-chairperson McCoy moved to arise at 1:37 p.m.

### II. Opening Statement.

Co-chairperson McCoy thanked the staff of the Legislative Services Agency and, in particular, Ms. Ann Ver Heul for her time and effort concerning the Committee. He acknowledged that legislation concerning this issue raised during the 2005 Legislative Session was contentious and difficult due to lack of understanding of the issues. He indicated that the purpose of the Committee is to listen and learn about the issues and that he hopes the Committee can provide recommendations regarding the issue.

Co-chairperson Raecker concurred with Co-chairperson McCoy's comments and stated that the issue had been around for several years and that he hopes to better understand the facts and issues concerned to see if legislation may be moved forward in the 2006 legislative session.

Co-chairperson Putney agreed with the comments of the other Co-chairpersons and asked to proceed with the presentations.

### III. Mr. James West, Iowa Automobile Dealers Association.

**Testimony.** Mr. James West read from a written statement that was distributed to the Committee members. Mr. West explained that he represents the Iowa Automobile Dealers Association (IADA), which has no position on any of the legislation introduced during the 2005 Legislative Session as there are IADA members on both sides of the issue. Mr. West provided an explanation of the regulation of the distribution and sale of new motor vehicles in Iowa. Mr. West explained that the distribution and sale of new motor vehicles is based upon the franchise contract or agreement between the manufacturer and the new motor vehicle dealer as regulated by Iowa Code chapters 322 and 322A. Code chapter 322 provides for the licensing of new motor vehicle dealers and Code chapter 322A regulates the franchise agreements between the manufacturer and new motor vehicle dealers.

Mr. West further explained the details of each chapter. In particular, Mr. West explained that the term "community," as defined in Code section 322A.1(2), is essentially the same as "area of responsibility" or "AOR," which is a geographic region assigned to each new motor vehicle dealer



by the manufacturer. A manufacturer is prohibited from permitting an additional new motor vehicle dealer to locate within the community of another dealer of the same make without good cause. Manufacturers are further prohibited pursuant to Code section 322A.11 from terminating a dealer solely because the dealer moves the dealer's place of business to a new location within the dealer's community.

Mr. West attached to his written statement a survey of laws of other states which have adopted restrictions or regulations concerning the location of motor vehicle dealerships.

**Discussion.** Representative Lykam asked Mr. West about the reduction in the number of new motor vehicle dealers in Iowa. Mr. West responded that in the 1970s there were approximately 1,600 new motor vehicle dealers and now there are only about 430.

Co-chairperson McCoy commented that while Iowa's franchise law has withstood the test of time, there has been a major shift in population from rural to urban areas. As a result, there have been many consolidations of dealerships, all of which have affected smaller communities. He asked Mr. West if he sees that trend continuing and if there is pressure by manufacturers to eliminate independent dealers. Mr. West replied that in the past there have been efforts by the manufacturers to take control of all of the dealerships and that the consolidations seem to be more a function of economics.

Co-chairperson McCoy asked Mr. West to explain further why the IADA is neutral on the issues raised in the proposed legislation. Mr. West stated that the IADA has tried to find common ground on the issues but that the IADA board of directors has determined that since common ground cannot be found, the position of the association is neutral.

Co-chairperson Raecker asked if it is true that the IADA generally opposes any changes to Code chapter 322A but is neutral on changes to Code chapter 322. Mr. West replied that the IADA does not want to reduce the protections of Code chapter 322A. Co-chairperson Raecker asked Mr. West to summarize the issues between the sides. Mr. West declined to do so and stated that he preferred that the parties describe the issues. Co-chairperson Raecker asked Mr. West to explain what happened to the compromise that the proposed legislation was supposed to represent. Mr. West replied that the IADA thought there was a compromise, but apparently there was not. Because no compromise could be made, and the IADA had members on both sides, it had to stay neutral. When asked by Co-chairperson Raecker if current Iowa law has adequate protections for auto dealers, Mr. West responded that the franchise law has been amended several times since the 1970s and that as manufacturers continue to try to avoid the requirements of Code chapter 322A, there may need to be more changes in the future. Co-chairperson Raecker also asked Mr. West what he thought the public interest in the issue is. Mr. West replied that the preamble to Code chapter 322 describes the public interest, which is to assure that motor vehicle dealers provide quality service and maintenance of motor vehicles to the residents of Iowa.

#### **IV. Mr. Michael Treinen, Iowa Auto Dealers Association for Fair Competition.**

**Testimony.** Mr. Michael Treinen stated that he represents an association of large dealerships from the Des Moines metro area which feels that current Iowa law is causing problems by allowing dealers to move within their AOR to compete with other dealers who have long-term commitments



## Motor Vehicle Dealers Study Committee

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in the area. He stated that motor vehicle dealers are being allowed to go into the territory of other dealers, which hurts consumers by creating clusters of dealers. Mr. Treinen stated that the group seeks legislative changes to Code chapter 322 to prevent dealers from moving too close to other dealers. He stated that the legislative changes they are proposing would limit the relocation of a dealer within its own AOR to avoid interfering with other dealers' markets. He stated that presently manufacturers are unable to prevent relocation of motor vehicle dealerships so long as the move is within the dealer's AOR.

Mr. Treinen said the IADA met in the summer of 2004 and developed a compromise that was contained in the study bills introduced during the 2005 Legislative Session which were initially adopted by the IADA as a top legislative priority. He stated that then the IADA decided it was neutral on the issue and this Committee was created to study the issue.

Mr. Treinen explained that the group's proposal would prevent relocation of a new motor vehicle dealership closer than 10 miles to the principal place of business of another dealer of the same make of motor vehicle. A dealer could relocate closer than 10 miles if the new location is within the dealer's AOR and within two miles of the dealer's current principal place of business, and the dealer has not relocated the principal place of business within the past five years, or the dealer receives consent from other dealers located within 10 miles of the proposed new location. The bill would also place limits on moving a place of business unless the move is within the dealer's AOR and the dealer has a supplemental license, or the dealer's community has changed, or the franchise allows relocation, or an administrative law judge determines that the new location would not diminish the service provided and the primary purpose of the move is other than to service customers outside the dealer's AOR.

Mr. Treinen also stated that the IADA has researched the issue and found that 38 other states have some kind of buffer zone between new motor vehicle dealerships. He stated that his association would like to see legislation similar to what was introduced last session to limit where dealers can move. Mr. Treinen then introduced Mr. Ron Brown and Mr. Stew Hansen, who are members of the Iowa Auto Dealers Association for Fair Competition, to make presentations.

### **V. Mr. Ron Brown, Bob Brown Chevrolet.**

**Testimony.** Mr. Ron Brown explained that his GM franchise is an example of how unintended consequences have resulted from existing Iowa law. He stated that Bob Brown Chevrolet has been around for 45 years for three generations and has been in Urbandale since 1967. He said that recently his dealership was assigned an unassigned area in West Des Moines. Mr. Brown said that he made a large investment in a facility only to have another dealer from Adel move his facility nine miles to Waukee, the fastest-growing community in Iowa. He opined that the problem is that there is no policing of locations within an AOR under current law. He stated that current law is designed to address dueling dealers, such as where one dealership sells both Ford and Chevrolet vehicles within the same facility. He said that several dealerships in smaller towns are currently considering moving more than 10 miles to be closer to the metro area. He stated that when these dealerships move from these communities, the communities will lose the parts and service they have had from those dealerships. Mr. Brown passed out to the Committee a map of these proposed relocations by other dealerships.



**Discussion.** Co-chairperson Putney asked about the position of the manufacturers concerning these proposed moves. Mr. Brown responded that the factory did challenge the Adel dealership's move but lost. He opined that the factories do not like the moves but cannot seem to do anything about them.

Co-chairperson McCoy asked if having so many competing dealerships would not in fact be good for competition. Mr. Brown responded that the strong would likely prevail, but that would not help the smaller surrounding communities.

Senator Rielly asked if an AOR consisted of 10 miles. Mr. Brown replied that an AOR is determined by the manufacturer taking into consideration factors including past performance and customer satisfaction and not any particular mileage.

Representative Lykam asked Mr. Brown if the factory allocates inventory to the dealers. Mr. Brown responded that inventory allocation is earned by sales.

Co-chairperson Raecker asked Mr. Brown if this issue is small dealers versus big dealers. Mr. Brown responded that the 1998 law change was made to help rural dealers, but there was no opposition by metro dealers. He stated that this issue is simply an unintended consequence of that change, which now allows smaller dealers to move to the metro.

Senator Zaun asked Mr. Brown if larger dealers get better prices on new cars. Mr. Brown responded that manufacturers give incentives based on sales and customer satisfaction but that there is no direct advantage for larger dealers.

Co-chairperson Putney asked about what is happening in other metro areas in Iowa. Mr. Brown responded that there are varying opinions from dealers in other metro areas. He stated that the problems seem to be happening in Des Moines first but will likely happen elsewhere too.

Representative Kaufmann expressed concern that the rural dealers are moving toward the metro for survival and expressed reservations about continued government intervention in these issues.

### **VI. Mr. Stew Hansen, Stew Hansen's Dodge City.**

**Testimony.** Mr. Stew Hansen stated that he is concerned about the ability of dealers to move their locations closer to the metro and siphon off existing dealers' business. He stated that manufacturers are not able to control the moves because of the changes to the Iowa law made in 1998. Mr. Hansen said that he would like to see legislative changes made to prevent dealers from moving their dealerships too close to another dealer of the same make. Mr. Hansen said he does not believe the issue is about protecting large dealerships from smaller competitors or urban dealers against rural dealers. Mr. Hansen said he supports passage of the legislation introduced last session which would prevent a dealer from moving a facility within 10 miles of another dealer of the same make and would also prevent a dealer from moving a facility more than 10 miles.

### **VII. Mr. James Piazza, Jr., Iowa Auto Dealers for Equal Opportunity.**

**Testimony.** Mr. James Piazza, Jr., stated that the Iowa Auto Dealers for Equal Opportunity (IADFEO) was formed in response to the legislation proposed by the metro group last session. He stated that the IADFEO consists of 110 automobile dealers doing business in both rural and urban



## Motor Vehicle Dealers Study Committee

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areas within Iowa and opposes expansion of state regulation and the proposed legislation regarding these issues. He stated that Code chapters 322 and 322A were enacted to protect consumers while this legislation goes beyond that state interest. He stated that a state regulatory procedure already exists to deal with these issues through the Department of Transportation and the Department of Inspections and Appeals. Mr. Piazza stated that there is no data to support the contention that relocation of a dealership will result in reduced service within the dealer's AOR. He stated that manufacturers have some power to alter a dealer's AOR.

Mr. Piazza opined that there is strong franchise protection in Iowa and that the proposed legislation would expand the state interest by regulating the dealer-versus-dealer relationship. He stated that the proposed legislation imposes costs on a dealer to obtain permission to relocate from an administrative law judge at a hearing. Mr. Piazza posed the question whether the state should also be involved in locating where pharmacies should be. He stated that competition between motor vehicle dealers is not currently regulated and the proposed legislation would result in the stifling of competition. He stated that the proposed legislation would impose restrictions on the whole state for a problem that is occurring only in Des Moines.

Mr. Piazza said that another problem with the proposed legislation is that the proposed distances are arbitrary. He stated that the proposed boundaries will have a disparate impact on rural dealers who have fewer growth opportunities than metro dealers. He opined that this is an urban-versus-rural issue as it would have a different effect on urban than rural dealers. He said that rural dealers want to move to capture some of the growth around the metro and believe they can do so without diminishing services to the rural communities. Mr. Piazza stated that he is not familiar with what other states have done and whether any of those laws have been challenged. He said that there may be interstate commerce issues with this proposed legislation and that the state should not legislate just to protect metro dealers.

**Discussion.** Co-chairperson McCoy asked questions related to current state regulation of the issue. Mr. Piazza responded that the Department of Transportation issues licenses to all new motor vehicle dealers although there may need to be additional protections put in place to protect against manufacturers installing another dealer within an AOR. Co-chairperson McCoy expressed that the General Assembly wants all Iowa businesses to succeed regardless of size and location and is concerned about multistate conglomerates buying up the smaller dealerships and relocating them close to existing Iowa businesses. Mr. Piazza responded that while that is a valid concern, metro dealers are also expanding. Co-chairperson McCoy stated that it is difficult to police the rich and the richer, which seems to be the challenge here. Mr. Piazza responded that his organization is not asking for protections for some businesses or for a revision of franchise law and that this proposed legislation is a move to alter existing franchise law concepts.

Co-chairperson Raecker asked about possible alternative solutions to what has been proposed. Mr. Piazza responded that his group comes to the table in good faith but does not have any proposal of its own. He stated that he is not sure there ever really was a compromise with the IADA, as his members have said there were problems with the process. Co-chairperson Raecker asked what the negative impact of the proposed legislation would be on the public interest. Mr. Piazza responded that if the General Assembly makes it harder for a dealer to move, the dealer may go out of business and the AOR would have to be reallocated to another dealer who may be





much farther away. He stated that it is in the public interest to not limit that ability in order to keep businesses healthy. He stated that under the proposed legislation, smaller dealers would not be able to move closer to new infrastructure to try to gain market share. Mr. Piazza said that he was unsure whether he is authorized to disclose his organization's member list.

### **VIII. Mr. Doug Livy, Iowa Independent Auto Dealers Association.**

**Testimony.** Mr. Doug Livy stated that he is the president of the Iowa Independent Auto Dealers Association (IIADA) and currently owns used car dealerships in Ames and Iowa Falls. Mr. Livy expressed concern on behalf of the IIADA that the proposed legislation introduced last session could have a negative impact on new and used car dealerships in Iowa. He stated that his association is also concerned that this Committee's charge was not limited to new car dealerships and could include used car dealerships as well.

### **IX. Ms. Judy Wilson, Iowa Independent Auto Dealers Association.**

**Testimony.** Ms. Judy Wilson stated that she is on the board of the IIADA and is chairperson of the IIADA legislative committee. Ms. Wilson also expressed concern that the intent of this Committee is to look at the relocation of used car dealers, recyclers, and motor home dealers. She stated that there has been a decline in new car dealerships in Iowa, likely due to many reasons, including rising costs of providing vehicle literature, mechanic service, advertising, and body shop repair. Ms. Wilson compared the proposed legislation to the improper use of eminent domain. She said that municipal governments are increasingly using zoning regulations and ordinances to regulate used car dealerships. Ms. Wilson stated that she sees nothing wrong with allowing a dealer to move anywhere within its AOR in order to be more competitive. She said the issue should be resolved through market forces and not state intervention.

She stated that there are many other economic factors negatively impacting car dealers, such as rising oil costs and interest rates. She opined that passing this type of legislation could lessen the value of dealerships in Iowa. She said that if the state starts regulating the location of car dealerships, Wal-Mart may want to restrict the location of competing pharmacies and Home Depot might want to restrict local hardware stores. She said that competition is the driving force of innovation and this legislation could be seen as granting monopolistic rights and an unfair restraint of trade. She suggested that instead, the General Assembly should consider regulating Internet sales of motor vehicles, predatory lending practices, and requiring more educational opportunities for used car dealers. She stated that the legislative process should not seek to restrict business but only to restrict those who limit or stifle competition.

### **X. Discussion.**

Co-chairperson Putney expressed confusion regarding the role of the manufacturers in the issue. He stated that he believes that the Committee must be careful because if there is a need for a law, it will affect more than the Des Moines area. He queried whether such legislation would protect Adel or Norwalk. He said that he does not understand how one dealer can sell both Ford and Chevrolet vehicles in the same dealership without problems with the integrity of the franchises.



## Motor Vehicle Dealers Study Committee

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Co-chairperson Raecker asked Ms. Martha Martel, the in-house attorney for the IADA, about the survey of other state laws that was completed by her for the IADA. Ms. Martel responded that she did not recall why the study was performed but that it is generally helpful to see what other states are doing when considering an issue. She stated that she was not sure where the 10-mile limitation in the draft legislation came from as each state that has passed similar legislation has unique language. She stated that she did not know whether any other state law has been challenged based on the Commerce Clause.

Co-chairperson McCoy again expressed concern with the megadealerships that have been buying up small dealerships around the country, including Iowa. He stated his fear that the industry will consolidate and Iowa will lose independent dealers altogether.

Mr. Scott Sundstrom of the IADA stated that he feels the Commerce Clause threat is a red herring because if the AOR is in another state, Iowa law would simply not apply.

Co-chairperson McCoy explained that he believes it is difficult to try to resolve the issue until the General Assembly receives proposed language agreed upon by both sides. He stated that the IADA needs to play a role in the discussion of a compromise or else the organization may not like what the state comes up with on its own. He stated that this Committee should consider directing the parties to come up with language.

Representative Lykam stated that he felt he could not make a decision with the information the Committee has at this time. He said that he does not believe this issue has come up in Davenport.

Co-chairperson Raecker said that he would like to determine if there is an issue that needs to be compromised on and then how to proceed from there and that he agrees that the first step should be with the parties involved and not the legislators.

Co-chairperson McCoy stated that he believes that the chairs appear to be in agreement that some action needs to be taken and that if the parties cannot agree, the General Assembly will find a solution on its own.

Senator Rielly asked what the ramifications will be if nothing is done and who should make the decision when there is a growing community.

Co-chairperson Putney asked to poll the Committee members to see if they think this is an issue that requires the General Assembly's attention. Senator Zaun stated that used car dealers are not at issue here but that otherwise, this is an issue that should be looked into. He stated that he sees the point of both sides. He acknowledged that the auto dealers have done a lot for his community of Urbandale.

Senator Rielly stated he is still struggling with what would happen if nothing is done and who should decide what dealer gets the growing communities. He said that he is uncertain if there is room for negotiation and whether the General Assembly should have any role.

Representative Lykam agreed there is an issue for Polk County but said that he does not know if the General Assembly should be involved or not. He said that he would like to see if the IADA can reach a compromise but that it is an issue that could tear the organization apart. Representative





Kaufmann agreed with Representative Lykam and stated his concern that the legislation proposed would not be good for his district.

Co-chairperson McCoy stated that he feels strongly that this is an issue the General Assembly should consider but does not think legislators should dictate a solution until the groups try first. He predicted that if nothing is done, Iowa will see the extinction of the independent car dealer due to the national trend of conglomerate dealers. Co-chairperson Raecker agreed that this is an issue for the General Assembly. He stated that the issue is complex due to the competing public interests of local dealers, larger dealers, and Internet sales. He stated he would like to see the industry try to work it out but has doubts what the IADA will be able to do.

Mr. West responded that he could not say whether the IADA would agree to try to work out a compromise because he does not have that authority. He stated that such a decision must come from the IADA's board of directors. He stated that the president of the association can either call a special meeting to make a decision or there is a meeting already scheduled in November.

Senator Zaun clarified for Mr. West that it is not the intent of the Committee to put the IADA in an awkward position and stated that he is more interested in the IADA bringing the parties together and facilitating the discussion. Co-chairperson McCoy agreed and stated that if the IADA decides it does not want to facilitate the discussion, it should report that back to the Committee so the General Assembly can take action on its own.

Mr. Piazza acknowledged it will be difficult to organize his group but stated that he will attempt to contact the group's 110 members.

Mr. Treinen also agreed to try to compromise on behalf of his association.

Co-chairperson McCoy moved that the IADA, if it chooses, facilitate a compromise for language for legislation to resolve the issue and present that language to the Committee in 45 days. Co-chairperson Raecker seconded the motion. Co-chairperson Putney asked if all of the members agreed and the members responded affirmatively.

### **XI. Materials on File With the Legislative Services Agency.**

The materials listed were distributed at or in connection with the October 11 meeting and are filed with the Legislative Services Agency. The materials may be accessed from the "additional information" link on the Committee's Internet page:

[http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=73.](http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=73)

1. Statement of Mr. James West, Iowa Automobile Dealers Association.
2. Maps presented by Mr. Ron Brown, Bob Brown Chevrolet, entitled "Iowa, United States, North America" and "Waukeke, Iowa, United States."
3. Statement of Mr. Stew Hansen, Stew Hansen's Dodge City.
4. Mr. James Piazza, Jr., Iowa Auto Dealers for Equal Opportunity, Position Memorandum.
5. Statement of Mr. Doug Livy, Iowa Independent Automobile Dealers Association.
6. Statement of Ms. Judy Wilson, Iowa Independent Automobile Dealers Association.



## Motor Vehicle Dealers Study Committee

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